

Remarks

These Remarks are in reply to the Office Action mailed February 12, 2007. The Examiner and Examiner Robert are thanked for extending the courtesy of an interview with the Applicant on Thursday March 8, 2007 at 12:30PM

The Examiner and Examiner Robert are also thanked for helpful suggestions regarding amending Claim 1, which were adopted. The Examiner's stated that amended Claim 1 would avoid both the 35 U.S.C. §112 objection and 35 U.S.C. §102 (b) rejection. The amendments introduced into Claim 1 are supported in the specification at least at paragraph [0047].

Claims 1-12 and 47-50 were pending in the Application prior to the outstanding Office Action. The Examiner withdrew claims 5 and 6 and rejected Claims 1-4, 7-12 and 47-50. In the present reply, the Applicant amends Claim 1 and 47-49. The Applicant respectfully requests that the Examiner reconsider the rejection, since it is the Applicants belief that Claims 1-4, 7-12 and 47-50 are now in condition for allowance.

Claim Rejections Under 35 U.S.C. § 112

Claims 1-4 and 7-12 were rejected under 35 U.S.C. 112 second paragraph as being indefinite.

The Applicant thanks the Examiner for her careful reading of the claims. The Applicant has amended Claim 1 to help particularly point out and distinctly claim what the Applicant regards as the invention.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-4, 7-12 and 47-50 were rejected under 35 U.S.C. 102(c) as being anticipated by Bertagnoli et al. U.S. Patent 5,571,109 (hereinafter "*Bertagnoli*").

Claim 1-4 and 7-12

Examiner Hoffman and Examiner Robert indicated that amended Claim 1 would not be subject to a 35 U.S.C. §102 (b) rejection to *Bertagnoli*.

Claims 2-4, and 7-12 all directly or indirectly depend from independent Claim 1, and are believed patentable for at least the same reasons as independent Claim 1 and because of the additional limitations of these claims.

Claims 47

Amended Claims 47 contains the limitation “wherein the first and second grooves are parallel; wherein the second pair of cutting blades are outboard of and spaced from the first pair of cutting blades”. Since *Bertagnoli* does not disclose the identical invention in as complete detail as is contained in Claim 47, it does not anticipate Claim 47.

Claims 48

Claims 48 contains the limitation a “tool for preparing the vertebral bodies for an implant comprising a cutter”. The Examiner directed the Applicant to Figure 7a of *Bertagnoli*. According to *Bertagnoli*, Figure 7a is another example of an implant (column 10, line 38). Thus the Examiner is citing the implant and not a tool for preparing vertebral bodies for an implant.

The auxiliary device in Figure 1A has a handle that attaches from underneath the tines. If the device in Figure 7 has cutting edges above and below the tines then it is not possible that a handle attaches to the tines since this would interfere with the cutting edges. Thus, the handle in Figures 1, 11-13 would interfere with the cutting edges shown in Figure 7. The Examiner is

requested to explain where *Bertagnoli* discloses modifying the implant of Figure 7 to act as a tool according to Claim 48. Since *Bertagnoli* does not disclose the identical invention in as complete detail as is contained in Claim 48, it does not anticipate Claim 48.

Claims 49

Amended Claims 49 contains the limitation “wherein the second pair of cutting blades are spaced from the first pair of cutting blades by the thickness dimension of the cutter body”. Since *Bertagnoli* does not disclose the identical invention in as complete detail as is contained in Claim 49, it does not anticipate Claim 49.

Claims 50

Claims 50 contains the limitation that the “tool contains a handle” and “wherein for the entire length of the blade cutting surface, the blade is parallel to the handle of the tool, such that with the handle moving in a horizontal plane the first and second cutting blades will cut parallel grooves in the horizontal plane”. The Examiner is respectfully requested to cite where in *Bertagnoli* the tool is disclosed with the limitations of a handle as specified in Claim 50. Since *Bertagnoli* does not disclose the identical invention in as complete detail as is contained in Claim 50, it does not anticipate Claim 50.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the 102(b) rejection.

CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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